88-1279

Supreme Court, U.S.
FILED
JAN 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

WALTON SUTHERLAND,

Petitioner,

vs.

THE UNITED STATES POSTAL SERVICE
and EDWARD R. TISCH, POSTMASTER GENERAL
OF THE UNITED STATES,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

WALTON SUTHERLAND
Petitioner Pro Se
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QUESTIONS PRESENTED

A. Whether a federal court can dismiss a timely filed complaint for lack of proper service if the Clerk of the court failed to issue a summons forthwith and tender the summons to the plaintiff so that the plaintiff might be able to timely serve the summons and complaint upon the defendants of an action.

B. Whether a federal court may deny a pro se plaintiff his request for counsel merely upon the basis that he is articulate in the presentation of a case.

C. Whether a federal court can dismiss a complaint for failure to name the proper defendant if:

(1) the notice of the right to sue contained an error which misled the plaintiff to name the wrong party; and

(2) if the statute of limitations is equitably tolled; and

(3) if notice was timely given to the party to be amended in the lawsuit.

D. Whether the federal court can dismiss a complaint for failure to follow the instructions for service placed upon a notice of the Equal Employment Opportunity Commission if said notice contained no instructions with which to follow.

E. Whether a federal court can dismiss an amended complaint if the original complaint was timely forwarded to the U.S. Marshal rather than the Attorney General of the United States or the U.S. Attorney or his designee.

PARTIES TO THE PROCEEDING

The petitioner is WALTON SUTHERLAND, a former Postal Mechanic of the United States Postal Service appearing pro se. The respondent is the UNITED STATES POSTAL SERVICE and EDWARD TISCH POSTMASTER GENERAL OF THE UNITED STATES. Said respondents were represented by Samuel A. Alito, Jr., United States Attorney of Newark, New Jersey.

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NO:

In The
SUPREME COURT OF THE UNITED STATES
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WALTON SUTHERLAND,

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vs.

THE UNITED STATES POSTAL SERVICE
and EDWARD R. TISCH, POSTMASTER
GENERAL OF THE UNITED STATES,

Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF
APPEALS FOR THE THIRD CIRCUIT

Petitioner, WALTON SUTHERLAND, respectfully prays that a writ of certiorari issue to review the orders of the United States Court of Appeals for the Third Circuit dated September 9, 1988 and October 31, 1988.

OPINION BELOW

The order of the Court of Appeals for the Third Circuit affirming the judgment of the District Court for the District of New Jersey (Newark) is dated September 9, 1988 and is set forth as Appendix "A" (App. A). The order of the Court of Appeals for the Third Circuit denying petitioner's request for a rehearing en banc and of the panel is dated October 31, 1988 and is set forth as Appendix "B". Upon information and belief, both orders are not reported.

The order of the District Court of the District of New Jersey (Newark), dated January 13, 1988, which dismissed the original complaint of the petitioner is set forth as Appendix "C".

The District Court order of the aforesaid Court, dated March 15, 1988, which dismissed petitioner's

complaint and amended complaint is set forth as Appendix "D". Upon information and belief, both orders are unreported.

The Opinion of the District Court, herein, which is not dated, is set forth as Appendix "E". The letter opinion of the District Court herein, which is dated March, 1988 is set forth as Appendix "F".

JURISDICTION

Upon information and belief, the orders of the United States Court of Appeals for the Third Circuit were entered on September 9, 1988 and October 31, 1988. The Petition for Certiorari is filed within the time permitted for filing. This Court's jurisdiction to review the case rests upon 28 U.S.C. §1254 (1).

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

United States Constitution, Article V, 28 U.S.C. §1254, 28 U.S.C. §1291, 29 U.S.C. §791, 29 U.S.C. §794(a)S (c), 42 U.S.C. 2000e-16(c), 28 U.S.C., §§509, 561 and 569(c) and Federal Rules of Civil Procedure 4(a), 12(b), 15(a), 15(c), 56, and 60(b) are reproduced in pertinent part in Appendix "G".

STATEMENT OF THE CASE

The appeal to the United State Court of Appeals for the Third Circuit arose out of a Title VII action filed by the petitioner, Sutherland, in the United States District Court for the District of New Jersey. Sutherland's complaint named only the federal agency for which he worked, the Postal Service, as defendant. Although timely filed, process did not issue to the petitioner in order that the summons and complaint could be served before the statute of limitations had run. The petitioner herein filed his complaint as a pro se litigant in the District Court of New Jersey on July 23, 1987. Subsequently, the Clerk of the District Court never issued a summons to petitioner who awaited delivery of the summons to him pursuant to Federal Rules of Civil Procedure 4

(a) so that he might affect proper and timely service. After having filed his complaint, the petitioner herein contacted the Postmaster General's office by telephone. He did so because the notice supplied to him failed to delineate the address for service of the summons and complaint. The petitioner made clear that he had commenced an Equal Employment Opportunity suit for discrimination. The petitioner asked for and obtained the address with which to serve papers.

Petitioner continued to await the delivery of the summons to him yet it never came inasmuch as the Clerk of the District Court herein issued the summons on July 28, 1987 and forwarded the same to the U.S. Marshal and not to the petitioner.

The Marshal never effected timely service upon the defendant within the statute of limitations. The statutory period for commencing the lawsuit and effecting service was 30 days after petitioner's receipt of his notice of right to file a civil complaint. Petitioner received said notice on June 29, 1987 and thus July 29, 1987 constituted the end of the statutory period for commencing and serving the defendants to the lawsuit.

The United States filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b) and/or for summary judgment, pursuant to Fed. R. Civ. P. 56, alleging that the wrong party had been named and that leave to amend should not be granted because it would be futile since relation back under Fed. R. Civ. P. 15(c) was unavailable. The United States

asserted that under the recent decisions in Schiavone v. Fortune, 977 U.S. 21 (1986) and Williams v. Army and Air Force Exchange Service, 830 F.2d 27 (3d Cir. 1987), Sutherland's failure to name and serve the correct defendant within the limitations period was fatal to his complaint.

After the United States' motion was filed but before the return date thereof, Sutherland, without leave of Court, filed pursuant to Federal Rule 15(a), an amended complaint which added Edward Tisch, Postmaster General of the United States, as a named defendant to the caption of the complaint.

By letter to the Court dated November 25, 1987, the United States requested that the Court also dismiss the amended complaint for the reasons contained in its motion papers.

The District Court accepted the United States' arguments and granted summary judgment dismissing the complaint and amended complaint.

By letter dated January 25, 1988, Sutherland asked the Court for relief from the Final Order dismissing the complaint and amended complaint on the grounds that: the complaint was filed in a timely fashion; the court failed to consider his request for appointment of counsel; and the notice ("Notice") informing Sutherland of his right to file a civil suit within thirty (30) days from the date he received the Equal Employment Opportunity Commission's ("EEOC") decision, was ambiguous inasmuch as said Notice directed petitioner to name as defendant the aforesaid agency or department head.

The District Court rejected

Sutherland's arguments finding that he did not present the Court with such extraordinary circumstances to justify relief from the Final Order. The District Court reiterated its position that the complaint and amended complaint were dismissed and would remain dismissed, since Sutherland failed to name the proper party in his original complaint pursuant to the instructions on the EEOC Notice, and the amended complaint cannot relate back to the original complaint, since it was not filed and served within the statutory period. The District Court also determined that its failure to appoint counsel for Sutherland did not warrant vacation of the Final Order. The Court, thereupon, determined that Sutherland was not entitled to the appointment of counsel.

Sutherland appealed to the United States Court of Appeals for the Third Circuit from the District Court's Final Orders dismissing the complaint and amended complaint and the March 15, 1988 Order denying his Rule 60(b) application for relief from the Final Order. The Court of Appeals affirmed on September 9, 1988 the orders of the District Court and denied petitioner the right to have a rehearing en banc and of the panel on October 31, 1988.

The jurisdiction of the Court of Appeals for the Third Circuit to review the orders of the District Court of New Jersey emanated from 28 U.S.C. §1291. The District Court of New Jersey's jurisdiction to entertain the action herein emanated from Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000(e) et seq., as amended, and the Rehabilitation

Act of 1963, 29 U.S.C. 791 and 794(c), as amended.

THE REASONS FOR GRANTING THE PETITION

This petition presents substantial questions of law having a widepsread effect on the rights of all pro se litigants to file a Title VII cause of action. This petition should be granted because this case involves monumental issues of constitutional and procedural importance.

1. The District Court and the Court of Appeals are Mistaken as to the Meaning of Federal Rule 15(c).

The District Court as affirmed by the Court of Appeals held that since the plaintiff failed to name the proper party in his original complaint, any attempt to amend the complaint must fail because the amendment cannot relate back to the original complaint since the complaint was not filed and served within the statutory period.

The above holding does not reflect the law as stated by Federal Rule 15(c) or in Schiavone v. Fortune, 977 U.S. 21 (1986). The key issue is not service but notice within the statute of limitations. In the case at bar, the petitioner placed the Office of the Postmaster General on notice as to his commencing the instant lawsuit. It is true that the petitioner did not effect service within the statutory period simply because process did not issue to the petitioner to permit him to effect timely service. However, the petitioner herein is not barred from amending his original complaint so long as the defendant who is subsequently amended to the lawsuit had notice of the action within the statutory period. Timely service of the complaint is not necessary to allow a complaint to be amended

pursuant to Rule 15(c).

Review of the instant case is urgently needed in order to correct any possible misinterpretation of the law by the Court of Appeals for the Third Circuit. The Court has taken upon itself by nature of its holding in Williams v. Army and Air Force Exchange Service, supra, to twist the meaning of the clear holding of the Supreme Court in Schiavone v. Fortune, supra:

(1) The holding in Schavone v. Fortune, supra, pertained to private parties and not governmental agencies. Nevertheless, the Court of Appeals for the Third Circuit has attempted to apply the Schiavone holding applicable to governmental agencies.

(2) The Supreme Court in the Schiavone decision addressed itself as to the requirement of notice as required

by the Federal Fules of Civil Procedure 15 (c). The Court of Appeals for the Third Circuit has required as a result of the Schiavone decision that there be timely service as opposed to timely notice in order to make Federal Rules of Civil Procedure 15(c) operable. Such is not the law.

(3) The Court of Appeals for the Third Circuit has based its holding vis-a-vis the meaning of Federal Rules of Civil Procedure 15(c) upon a case that never involved a ruling by the District Court below on whether Federal Rule 15(c) should or should not be granted. As an appellate court, the Court of Appeals for the Third Circuit could only sustain or reverse solely upon the rulings of the District Court below.

(4) The holding of the Court of Appeals for the Third Circuit in the

Williams decision, supra, completely contradicts the holding of the Court of Appeals for the Third Circuit in the case at bar. This is so because in both cases, the issue of equitable tolling was raised. In the Williams decision, the Court held that, since the government engaged in no misrepresentations to the plaintiff therein, the doctrine of equitable tollings was inapplicable.

In the instant case, even though there was apparent misrepresentation by the government as to who was the proper party to be named as defendant, the Court nevertheless failed to rule that the doctrine of equitable tolling was inapplicable.

Guidance from the Supreme Court of the United States is urgently needed in order to rectify the Court of Appeals for the Third Circuit's possible confusion.

Furthermore, the U.S. Attorney in his papers before the Court of Appeals for the Third Circuit set forth erroneous information and factual statements. The U.S. Attorney in his appellate brief said: "Sutherland did not serve the postal service until August 20, 1987, twenty-two (22) days after the expiration of the time period provided by law for commencing the action." The truth of the matter is that process did not issue to Sutherland at all to allow him to effect timely service of the original complaint since the Clerk of the District Court forwarded process to the U.S. Marshal and not to Sutherland. It must be emphasized, therefore, that Sutherland did not serve the Postal Service at all with the original complaint since he was not delivered process. However, the U.S. Attorney

argued that Sutherland did not make tardy service to the Postal Service on August 20, 1987. Such is utterly not the truth.

Furthermore, the U.S. Attorney argued in the same brief before the Appellate Court herein, that: "It is also undisputed that the Postmaster General did not have notice of this action within the thirty (30) day period for commencing it." Once again the Appellate Court may have been misled by possible fraud on the part of the U.S. Attorney. Sutherland did not enter into any stipulation with the U.S. attorney to the effect that the Postmaster General did not have notice of this action within the thirty (30) day period for commencing it. In fact, the record below is silent as to any claims as to notice to the Postmaster General having been made by

Sutherland. In addition, the U.S. Attorney failed to produce into evidence an affidavit from the Postmaster General attesting to lack of receipt of notice during the aforementioned period. It is evident, therefore, that the statement of the U.S. Attorney as to "undisputed" lack of notice to the Postmaster General may clearly be a falsehood. The petitioner Sutherland was never questioned by the U.S. Attorney as to the notice issue of the case. Furthermore, the petitioner never made any statements as to the notice issue in his moving papers. The truth is that the U.S. Attorney had no evidence to support his claim of "undisputed" lack of notice and thus should have merely stated to the Appellate Court that the petitioner Sutherland has made no statement as to notice because he was never questioned

on that issue.

2. The Amended Complaint Should Stand Because Forwarding of Process for Service of the Complaint Issued to the United States Marshal Within the Statutory Period.

It is well established that pursuant to Rule 15(c) of the Federal Rules of Civil Procedure that the mailing or delivery of a process to the United States Attorney, or his designee, or the Attorney General of the United States, or any agency or officer who would have been a proper defendant if named satisfies the requirements of the law as to adequate notice to any federal agency. In the case at bar, process was forwarded to the U.S. Marshal within the required statutory period for commencing the action. It is evident that the U.S. Marshal is an agency of the U.S. Department of Justice as established

by 28 U.S.C. §561 and following. In addition, the U.S. Marshal is an agency of the U.S. Attorney General since all functions of the Department of Justice less any exceptions noted by statute vest in the Attorney General by virtue of 28 U.S.C. 509. See also 28 U.S.C. 569(c).

3. The Statute of Limitations Herein is Equitably Tolled.

The notice tendered by the Equal Employment Opportunity Commission to the petitioner Sutherland (Appendix H) was defective inasmuch as it instructed him to "name the official agency or department head as defendant." Naming the official agency as defendant in the case at bar was contrary to the law as established by 42 U.S.C. § 2000e-16(c); 29 U.S.C. §794(a). The statutes require the head of the department to be named as defendant.

The defendants argued that the doctrine of equitable tolling does not apply to the U.S. or its agency due to the doctrine of sovereign immunity.

The Circuit Courts are split as to this issue. Compare, for example, Sims v. Heckler, 725 F.2d 1143, 1145 (7th Cir., 1984) wherein the distinction between federal and private employers has led the Seventh Circuit to hold waiver, estoppel, and equitable tolling unavailable in Title VII cases against the government and Milam v. United States Postal Service, 674 F.2d 860 (11th Cir. 1982) where a different conclusion was reached.

It is prayed that the Supreme Court resolve the issue as to whether equitable tolling may apply to a governmental agency or officer in order to remedy any apparent injustice as revealed here where the petitioner

was misled by the government to his detriment to name the wrong defendant.

4. The Petitioner was Denied Due Process of Law by the Court's Denial of Effective Access to the Court.

Petitioner beseeched the District Court to appoint counsel on his behalf at the time of filing his complaint. The Court failed to rule upon his timely application. When he subsequently asked for the appointment of counsel, the District Court held that a reading of plaintiff's complaint and supporting papers indicates that "he is capable of presenting the facts in a clear and articulate manner... Therefore I do not find that counsel would have been appointed in this case." (See Appendix F).

Such a statement is a logical and legal absurdity. The pro se petitioner beseeched the Court for counsel in

order to properly prepare, file and serve a proper complaint. To deny petitioner counsel merely because he is articulate is a denial of due process of law as guaranteed by the Fifth Amendment as is the Court's failure ab initio to rule upon the petitioner's initial application for counsel since the Court's ruling denied petitioner effective access to the Court. Being articulate cannot nullify one's opportunity to have counsel appointed in a civil proceeding. In addition, the Court's failure to deliver the summons to the petitioner pursuant to Federal Rule 4(a) also constituted a denial of due process and a denial of access to the Court.

5. The District Court's Holding Was in Error.

The District Court held that if the plaintiff complied with the

instructions placed on the EEOC's notice (See Appendices F and H) with respect to naming the proper party defendant and timely service, the complaint would not have been dismissed. The Equal Employment Opportunity Commission's notice contained no instructions as to proper service so how could the petitioner herein have followed said instructions. In addition, process never issued to plaintiff so that he could effect service of the original complaint in a timely fashion.

CONCLUSION

The petition for a Writ of Certiorari should be granted.

Dated: Jersey City, New Jersey
January , 1989

Respectfully submitted,

WALTON SUTHERLAND
Petitioner Pro Se

APPENDIX

Order of the Court of Appeals
For the Third Circuit, dated
September 9, 1988, Appendix A

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 88-5238

WALTON SUTHERLAND,
Appellant

v.

U.S. POSTAL SERVICE, &
EDWARD TISCH, Postmaster
General of the United States

Appeal from the United States
District Court for the District of
New Jersey (Newark)
(D.C. Civil Action No. 87-2957)
District Judge: Hon. Harold A. Ackerman

Submitted Under Third Circuit Rule 12(6)
June 14, 1988

Before: HIGGINBOTHAM, SLOVITER and
MARIS, Circuit Judges.

JUDGMENT ORDER

After consideration of all contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby AFFIRMED.

Costs taxed against appellant.

BY THE COURT,

_____
Circuit Judge

Attest:

_____
Sally Mrvos, Clerk

SEP 9 1988

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 88-5238

WALTON SUTHERLAND,

Appellant

v.

U.S. POSTAL SERVICE, &
EDWARD TISCH, Postmaster
General of the United States

(D.C. Civl No. 87-2957)

SUR PETITION FOR REHEARING

Present: GIBBONS, Chief Judge, SEITZ, HIGGINBOTHAM, SLOVITER, BECKER, STAPLETON, MANSMANN, GREENBERG, NUTCHINSON, SCIRICA and COWEN, Circuit Judges and MARIS, Senior Circuit Judge.*

The petition for rehearing filed by appellant in the above-entitled case having been submitted to the

judges who participated in the decision of this Court and to all the other available circuit judges of the circuit in regular active service, and no judge who concurred in the decision having asked for rehearing, and a majority of the circuit judges of the circuit in regular service not having voted for rehearing, the petition for rehearing by the panel and the Court in banc, is denied.

BY THE COURT

_____
Circuit Judge
Dated: October 31, 1988

*Honorable Albert B. Maris, Senior Circuit Judge sat on the original panel and does not desire rehearing by the panel.

UNITED STATES DISTRICT COURT DISTRICT OF NEW JERSEY	
WALTON SOUTHERNLAND, Plaintiff,	Hon. Harold A. Ackerman
v.	
UNITED STATES POSTAL SERVICE, PRESTON TISCH, Postmaster General of the United States, Defendant.	Civil Action No. 87-2957 ORDER

This matter having been opened by the Court by Samuel A. Alito, Jr., United States Attorney for the District of New Jersey (by Janice Montana, Assistant U.S. Attorney), for an Order dismissing the Complaint and Amended Complaint for lack of subject matter jurisdiction and the Court having considered the papers submitted, without oral argument pursuant to Fed.R.Civ. P. 78, and for good cause shown,

IT IS on this 13th day of January, 1988.

ORDERED that the Complaint and Amended Complaint be and are hereby

dismissed with prejudice.

HON. HAROLD A. ACKERMAN
UNITED STATES DISTRICT
COURT JUDGE

Order of the District Court of New Jersey dated March 15, 1988, Appendix D

JM:mgg - 3486S/P5

	UNITED STATES DISTRICT COURT DISTRICT OF
WALTON SUTHERLAND,	NEW JERSEY
Plaintiff,	Hon. Harold A. Ackerman
v.	
UNITED STATES POSTAL SERVICE, PRESTON TISCH, Postmastre General of the United States,	Civil Action No. 87-2957
Defendants.	ORDER

This matter having been opened to the Court by plaintiff Walton Sutherland, Pro Se, upon plaintiff's application for relief from the Court's January 13, 1988 Order and decision dismissing the Complaint and Amended Complaint for lack of subject matter jurisdiction and Samuel A. Alito, Jr., United States Attorney for the District of New Jersey (by Janice

Montana, Assistant U.S. Attorney), submitting opposition thereto and the Court having considered the papers submitted, without oral argument pursuant to Fed. R.Civ. P. 78, and for good cause shown,

IT IS on this 15th day of March, 1988,

ORDERED that plaintiff's application for relief from the January 13, 1988 Order and decision dismissing the Complaint and Amended Complaint with prejudice, be and is hereby denied.

HON. HAROLD A. ACKERMAN
United States District
Court Judge

Opinion of the District Court of New Jersey, Not Dated Appendix E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

WALTON SUTHERLAND,	:	Civil Action
	:	No.87-2957
Plaintiff,	:	
	:	
v.	:	O P I N I O N
	:	
UNITED STATES POSTAL SERVICE	:	
	:	
Defendant.	:	
	:	

ACKERMAN, District Judge

INTRODUCTION

This employment discrimination action is brought by plaintiff, Walton Sutherland, a former employee of the United States Postal Service. Before me today is the motion of defendant, United States of America, to dismiss the complaint upon which this suit is based.

PROCEDURAL HISTORY

On July 23, 1987, plaintiff, proceeding pro se, filed his initial complaint in federal court in which he alleged that he was the victim of a reprisal for statements he made to an Equal Employment Opportunity ("EEO") counselor and handicap discrimination. This complaint was served upon the Attorney General of the United States on August 19, 1987 and the United States Post Office as well as the U.S. Attorney's Office for the District of New Jersey on August 20, 1987.

On October 16, 1987, the Clerk of the Court granted the request of the government for an extension of time within which to respond to the complaint.

On November 2, 1987, the United States moved for an order dismissing the within complaint pursuant to Fed. R.Civ. P. 12(b)(1) for lack of subject matter jurisdiction on the ground that the United States Postal Services is not a proper party defendant to plaintiff's claims and any attempt to amend the complaint to name the Postmaster Geneal as a defendant is untimely.

On November 5, 1987, plaintiff, without leave of court, filed an amended complaint in which he named Postmaster General Tisch as a defendant in this action. On December 2, 1987, this complaint was served upon the Attorney General of the United States, United States Postal Service, and the United States Attorney's Office for the District of New Jersey.

The government now moves to dismiss the within complaint pursuant to Fed.R. Civ.P. 12(b)(1). Since the motion attacks the complaint on its face, the court must consider the allegations embodied in the complaint as true. Mortensen v. First Federa Sav. & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977). In reviewing the complaint, I am simultaneously mindful that a pro se complaint is held to less stringent standards than formal pleadings drafted by lawyers. See Haines v. Kerner, 404 U.S. 519, 520 (1972); Hurd v. Romeo, 752 F.2d 68, 70 (3d Cir. 1985).

FACTS

With this standard in mind, I find that on July 4, 1986, plaintiff arrived at his place of employment, the New Jersey International and Bulk Mail Center in Jersey City, New Jersey

and his supervisior, John Boykin, informed him that he was not permitted to begin his shift, upon instructions of their superintendent, Mr. Aponto-Colon. Apparently, Mr. Aponte-Colon informed Boykin that plaintiff could not begin work unless he produced a doctor's note that outlined any limitations on his ability to perform his duties as a postal mechanic that may have been caused by his diabetic condition and participation in insulin therapy.

As a result of the refusal of the Postal Service to permit plaintiff to work, plaintiff was absent from his position for five days. During this period, plaintiff received sick leave pay.

Plaintiff also claims that he was denied access to the work site

because of statements he made to Mr. Fred Kroog, an EEO counselor for the Postal Service. The record, however, reveals that plaintiff contacted the EEO counselor on August 6, 1986, at which time plaintiff claims the July 4, 1986 personnel action constituted unlawful handicap discrimination. On January 30, 1987, plaintiff filed an EEO complaint of handicap and reprisal discrimination with the United States Postal Service. On March 5, 1987, the agency found that plaintiff failed to seek EEO conuseling in a timely manner. On June 25, 1987, the Equal Employment Opportunity Commission ("EEOC") affirmed the decision of the agency based, in part, on the fact that plaintiff failed to establish that he contacted an EEO counselor in a timely fashion. Specifically, the

EEOC found no support for plaintiff's assertion that he contacted such a counselor on July 7, 1986.

On June 29, 1987, plaintiff received notice of the EEOC's final decision and was informed that he had a right to file a civil action in federal court within thirty days of receipt of the final decision of the EEOC and that in such action he must specifically name the official agency department head either by name or title, and that failure to do so "may result in the loss of any judicial redress." See Notice of Right to File a Civil Action, attached to plaintiff's complaint. Plaintiff filed his initial complaint in federal court on July 23, 1987. Review of that complaint reveals that the only named defendant is the United States Postal Service.

In its motion to dismiss, the United States argues that since the Postal Service is not a proper party defendant, this Court lacks subject matter jurisdiction. Specifically, the government argues that section 717 of Title VII, 42 U.S.C. §2000(e)-16(c), requires that a federal employee who files a civil action for employment discrimination against a federal agency, name as defendant the head of the department, by title or name. The government further argues that any attempt to amend the complaint to name the Postmaster General as a defendant is time barred and would not relate back to the date the original complaint was filed since the new defendant would not receive notice of the action within the applicable limitation period.

In response to this motion, plaintiff

filed an amended complaint in which he specifically names the Postmaster General as a party defendant.

DISCUSSION

Plaintiff alleges that conduct on the part of agents of the Postal Service constituted unlawful reprisal discrimination in violatio of section 717 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. §2000e-16, and handicap discrimination, in violation of section 501 of the Rehabilitation Act, 29 U.S.C. §791, et seq.

Section 717 of Title VII prohibits, inter alia, the United States Postal Service from taking any personnel actions which discriminate on the basis of race, color, religion, sex or national origin. This provision also protects a federal employee's right to speak out against discriminatory

practices carried on by a federal agency. See, e.g., Neely v. Blumenthal, 458 F.Supp. 945, 956-57 (D.D.C. 1978). If a federal agency engages in personnel actions which are motivated by the employee's exercise of this right, the agency may be liable for what is commonly referred to as reprisal discrimination.

Similarly, a federal agency may be liable for acts of unlawful handicap discrimination. Sections 501 and 504 of the Rehabilitation Act, 29 U.S.C. §791, 794, provide a statutory basis upon which an individual may bring a private cause of action to obtain relief from handicap discrimination on the part of the federal government of its agencies. See Prewitt v. United States Postal Service, 662 F.2d 292, 304 (5th Cir. 1981).

If a federal employee seeks to pursue a claim of race, religion, reprisal, sex, national origin or handicap discrimination, he or she must comply with the procedures delineated in section 717(c). See 29 U.S.C. §794a, which states that a federal employee pursuing a claim of handicap discrimination must seek redress in accordance with the procedures set forth on section 717(c).

Section 717(c) states that

> Within thirty days of receipt of notice of final action taken by ... the Equal Employment Opportunity Commission upon an appeal from a decision or order of [the United States Postal Service] ... on a complaint of discrimination, an employee ..., if aggrieved by the final disposition of his complaint ... may file a civil action ... in which civil action the head of the department, agency or unit, as appropriate, shall be the defendant.

Thus, the statute clearly requires that the only proper defendant in suits brought by federal employees under Title VII and the Rehabilitation Act is the head of the department or agency in which the alleged discrimination took place. Williams v. Army & Air Force Exchange Service, 830 F.2d 27, 29 (3d Cir. 1987); Johnson v. United States Postal Service, et al., No. 85-5596 (D.N.J. filed September 24, 1986) (unpublished). Since it is undisputed that the correct defendant in this action is the Postmaster General, as indicated by either name or title, the initial complaint in this suit fails to reveal a basis upon which this court could exercise subject matter jurisdiction.

The plaintiff, however, on November 5, 1987, amended his complaint by naming

the Postmaster General as a defendant. This amendment was made without leave of court. Federal Rules of Civil Procedure 15(a) provides that a party may amend a pleading once without leave before a responsive pleading is served. A motion to dismiss, filed by a defendant, does not constitute a responsive pleading that bars a party from amending as a matter of course. Fed.R. CivlP. 7(a); Neifeld v. Steinberg, 438 F.2d 423, 425 n.3 (3d Cir. 1971); Kronfeld v. First Jersey Nat'l Bank, 638 F.Supp. 1454, 1460 (D.N.J. 1986); Markovich v. Vasad Corp., 617 F.Supp. 142, 143 (E.D. Pa. 1985) and cases cited therein; 6 C. Wright & A. Miller Federal Practice & Procedure §1483 at 411-12. Thus, as the defendant has not answered plaintiff's complaint, but rather has filed a motion to dismiss,

which is not a responsive pleading, plaintiff may file his complaint as a matter of right if the amendment is made in a timely fashion and thereby relates back to the initial complaint as of originally filed at that time.

Rule 15(c) governs the relation back of an amendment to alter the party against whom a claim asserted. The rule states that such an amendment relates back to the date of the original pleading if

> (1) the basic claim arose out of the conduct set forth in the original complaint;
>
> (2) the party to be brought in received such notice of the action as it will not be prejudiced in maintaining its defense;
>
> (3) that party knew or should have known that, but for a mistake concerning identity of the proper party, the action would have been brought againt it; and
>
> (4) the second and third requirement must have been fulfilled within the prescribed limitations period.

Schiavone v. Fortune, 106 S.Ct. 2379, 2384 (1986); Williams, supra, 830 F.2d at 29; Cooper v. United States Postal Service, 740 F.2d 714 (9th Cir. 1984).

There is no doubt that the claim plaintiff seeks to assert against the Postmaster General in his amended complaint is identical to that set forth in the original pleading. There is, however, a question as to whether the Postmaster General received notice of this action within the prescribed limitations period of 30 days after final action was taken by the EEOC. In the case at bar, the EEOC took its final action on June 25, 1987 and plaintiff received notice on June 29, 1987. Thus, according to the 30 day limitations period, the Post-master General should have received

notice of the within action on July 29, 1987. Although the initial complaint was filed on July 27, 1987, service was not effectuated upon the Postmaster General until December 2, 1987. The Supreme Court in Schiavone observed that notice may be imputed to such a "subsequently named and sufficiently related party" by the timely filing of a complaint and notice, within the limitations period, to the party named. 106 S.Ct. at 2384. Continuing, the court noted that the "linchpin is notice ... within the limitations period. Id at 2385. In the case at bar, the Postmaster did not receive notice within the limitations period. Moreover, even substituted service upon the Attorney General or the U.S. Attorney failed to save the plaintiff

since neither of these substituted defendant parties were served within the limitations period, as both were served on August 19 and 20, 1987, respectively.

Thus, since the defendants failed to receive notice within the 30 day limitations period and since the Supreme Court in Schiavone has admonished the lower courts from

> temper[ing] the plain meaing of the language (of Rule 15(c)) by engrafting upon it an extension of the limitations period equal to the asserted reasonable time, inferred from Rule 4, for the service of a timely filed complaint[,]

Schiavone, supra, 106 S.Ct. at 2385, I am compelled to conclude that plaintiff's amendment, naming the Postmaster General as a party defendant, cannot relate back to the original complaint. Therefore, since the initial complaint fails to comply with the procedures

delineated in Section 717 of Title VII, I find that this Court lacks subject matter jurisdiction to resolve the within controversy and hence the case is dismissed despite the harshness of the result in a case wuch as this which involves such a short statute of limitations (30 days) and an untutored litigant ... [A]melioration of these harsh results, [however] is for the Rules Committee, not for this Court." Williams, supra, 830 F.2d at 30.

Letter Opinion of the District Court
of New Jersey, dated March, 1988
Appendix F

UNITED STATES DISTRICT COURT
District of New Jersey

Chambers of
Harold A. Ackerman
Judge

U.S. Post Office
and Courthouse
Newark, NJ 07101

NOT FOR PUBLICATION

LETTER OPINION

March , 1988

Mr. Walton Sutherland
P. O. Box 16277
142 Romaine Avenue
Jersey City, NJ 07306

Janice Montana, Esq.
Assistant U.S. Attorney
970 Broad Street
Room 502
Newark, NJ 07102

Re: Sutherlnd v. United States
Postal Service
Civil Action Number 87-2957

Dear Mr. Sutherland and Ms. Montana:

The court is in receipt of plaintiff's request that it reconsider its decision, filed January 13, 1988, in which it dismissed plaintiff's complaint because this court lacked subject matter jurisdiction to adjudicate the within controversy.

Specifically, the court found that plaintiff failed to name the proper party defendant and his attempt to amend his complaint in this respect was not timely.

In support of his request for relief from this decision and/or for reconsideration, plaintiff argues that he made a timely request for the appointment of counsel which the court had not ruled upon and that with legal representation, the complaint would not have contained the technical error which resulted in its dismissal. Plaintiff also argues that the EEOC notice of his right to file a civil suit did not clearly state that he was to name the agency head by title or personal name but rather seemed to approve of identifying the agency itself. Specifically, he states that the notice directed him to "Name the appropriate official agency or Department head as defendant." (emphasis added). The conjunction "or" lead him to conclude that identifying the agency was sufficient. Plaintiff stresses that this ambiguity should not result in a penalty against him, especially in light of his pro se status.

In response, the Postal Service argues that plaintiff failed to file his complaint in a timely fashion, and plaintiff did not formally file his request for counsel within the statutorily defined period of 30 days from the date he received the decision of the Equal Employment Opportunity Commission. Moreover, the government asserts that failure of plaintiff to obtain counsel

does not excuse him from his failure to name the proper party defendant and file his complaint against that party in a timely manner. Finally, the Postal Service asserts that the EEOC's notice clearly states that plaintiff was required to identify the official title or name of the agency head for the department against whom he brings suit and thus his claim that the notice is ambiguous must fail.

Federal Rule of Civil Procedure 60(b) provides that a court may relieve a party from a final order upon a finding of, inter alia, mistake, inadvertency, surprise, excusable neglect, newly discovered evidence, fraud or misrepresentation. The "remedy provided by Rule 60(b) is extraordinary and special circumstances must justify" setting aside a judgment already entered. Id. (quotation marks and citations omitted) and cases cited therein. Moolenaar v. Government of the Virgin Islandsa, 822 F.2d 1342, 1347 (3d Cir. 1987). Thus, the Court may relieve a party of a final order if presented with exceptional circumstances. Id.

In general, I do not find that plaintiff has presented this court with such extraordinary circumstances to justify my disturbing the final judgment I entered. First, as indicated in my previous decision in this case, plaintiff failed to file and serve his initial complaint within the limitations period. Plaintiff now asserts, however, that this court's failure to consider his request for counsel

resulted in the technical errors which lead to the dismissal of his complaint. The fact of the matter is that had plaintiff complied with the instructions placed on the EEOC's notice with respect to naming the proper party defendant and timely service, the complaint would not have been dismissed. Thus, even assuming his complaint of July 27, 1987, constituted a timely request for counsel, his failure to obtain such does not justify his failure to timely file and serve a properly pled complaint. See Williams v. Army & Air Force Exchange Service, 830 F.2d 27, 30-31 (3d Cir. 1987). To reiterate, in this case plaintiff failed to name the proper party defendant in his original complaint and any attempt to amend the complaint must fail because the amendment cannot relate back to the original complaint since it was not filed and served within the statutory period.

Moreover, even considering plaintiff's request for counsel at this time, I do not find that the circumstances of this case warrant the discretionary appointment of counsel. Roy v. Robinson, 640 F.2d 474, 477 (3d Cir. 1981). A reading of plaintiff's complaint and supporting papers indicates that he is capable of presenting the facts in a clear and articulate manner. Further, it appears that he has sufficient ability to have presented his case to the court. Therefore, I do not find that counsel would have been appointed in this case.

I will next address plaintiff's claim that the EEOC's notice is ambiguous. The notice specifically states tha an individual bringing a civil action in Federal court "MUST NAME THE APPROPRIATE OFFICIAL AGENCY OR DEPARTMENT HEAD." (emphasis in original). Continuing, the notice provides that '[f]ailure to provide the NAME OR OFFICIAL TITLE of the agency head or, where appropriate, the department, may result in the loss of any judicial redress to which you may be entitled." (emphasis in original).

The language of the notice notifies plaintiff of the requirement that he or she name the proper party defendant by title or personal name. While I agree with the court in Williams, that amending the notices to include a paragraph that contains examples of the proper way to denote the party defendant would add clarification, I do not find that the absence of this information indicates that the present notice is insufficient or excuses plaintiff's failure to comply with its requirements.

Therefore, since I do not find that plaintiff has brought forth evidence that indicates that this court committed an error or inadvertently entered the order in any way, I will not vacate my order of January 8, 1988. While I recognize the harshness of the result of my decision, I find that the law of this Circuit requires strict compliance with the mandates of the EEOC notice

and failure to comply results in dismissal.

An order in conformance with this opinion has been filed with the court.

Constitutional and Statutory Provisions Involved, Appendix G

The Fifth Amendment of the United States Constitution provides:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; not shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty or property, without due process of law; nor shall private property be taken for public use, without just compensation.

(Emphasis added to pertinent section).

28 U.S.C. §1254 (1)

Cases in the court of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree:

* * *

28 U.S.C. §1291

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, and the District Court of the Virgin Islands, except where a direct review may be had in the Supreme Court.

* * *

28 U.S.C. §791

Each department, agency, and instrumentality (including the United States Postal Service and the Postal Rate Commission) in the executive branch shall, within one hundred and eighty days after September 26, 1973, submit to the Office of Personnel Management and to the Committee an affirmative action program plan for the hiring, placement, and advancement of handicapped individuals in such department, agency, or instrumentality. Such plan shall include a description of the extent to which and methods whereby the special needs of handicapped employees are being met. Such plan shall be updated annually, and shall be reviewed annually and approved by the Office, if the Office determines, after consultation with the Committee, that such plan provides sufficient

assurances, procedures and commitments to provide adequate hiring, placement, and advancement opportunities for handicapped individuals.

29 U.S.C. §794(a)

(a)(1) The remedies, procedures, and rights set forth in section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e-16), including the application of sections 706(f) through 706(k) (42 U.S.C. 2000e-5(f) through (k)), shall be available, with respect to any complaint under section 791 of this title, to any employee or applicant for employment aggrieved by the final disposition of such complaint, or by the failure to take final action on such complaint. In fashioning an equitable or affirmative action remedy under such section, a court may take into account the reasonableness of the cost of any necesary work

place accommodation, and the availability of alternatives therefor or other appropriate relief in order to achieve an equitable and appropriate remedy.
29 U.S.C. §794C

There shall be established an Interagency Coordinating Council (hereinafter referred to as the "Council") composed of the Secretary of Education, the Secretary of Health and Human Services, the Secretary of Labor, the Assistant Secretary of the Interior for Indian Affairs, the Attorney General, the Chairperson of the Office of Personnel Management, the Chairperson of the Equal Employment Opportunity Commission, and the Chairperson of the Architectural and Transportation Barriers Compliance Board. The Council shall have the responsibility for developing and implementing agreements, policies, and

practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication, and inconsistencies among the operations, functions, and jurisdictions of the various departments, agencies, and branches of the Federal Government responsible for the implementation and enforcement of the provisions of this subchapter, and the regulations prescribed thereunder.

42 U.S.C. §2000e-16(c)

(c) Civil aciton by party aggrieved. Within thirty days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection 717(a) [subsec 9a) of this section], or by the Civil Service Commission upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant

to subsection (a) of this section. Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Civil Service Commission on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 706 [42 USCS §2000e-5], in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

28 U.S.C. §509.

All functions of other officers of the Department of Justice and all functions of agencies and employees of the Department of Justice are vested in the Attorney General except the functions -

(1) vested by subchapter II of chapter 5 of title 5 in administrative law judges employed by the Department of Justice;

(2) of the Federal Prison Industries, Inc.; and

(3) of the Board of Directors and officers of the Federal Prison Industries, Inc.

28 U.S.C. §561

The President shall appoint, by and with the advice and consent of the Senate, a United States marshal for each judicial district.

28 U.S.C. §569(c)

The Attorney General shall supervise and direct United States marshals in the performance of public duties and accounting for public monies. Each marshall shall report his official proceedings, receipts and disbursements and the condition of his office as the Attorney General directs.

Federal Rule of Civil Procedure 4(a)

(a) Summons: Issuance. Upon the filing of the complaint the clerk shall forthwith issue a summons and deliver the summons to the plaintiff or the plaintiff's attorney, who shall be responsible for prompt service of the summons and a copy of the complaint. Upon request of the plaintiff separate or additional summons shall issue against any defendants.

Federal Rule of Civil Procedure 12(b)

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (b) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state a claim upon which relief can be granted, (7) failure to join a party under Rule 19. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one

more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Federal Rule of Civil Procedure 15(a)

(a) Amendments. A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served or, if the pleading is one to which no responsive pleading is permitted and the action has not been placed upon the trial calendar, the party may so amend it at any time within 20 days after it is served.

Federal Rule of Civil Procedure 15(c)

(c) Relation Back of Amendments. Whenever the claim or defense asserted in the amended pleading arose out of the conduct,transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading. An amendment changing the party against whom a claim is asserted relates back if the foregoing provision

is satisfied and, within the period provided by law for commencing the action against the party to be brought in by amendment that party (1) has received such notice of the institution of the action that the party will not be prejudiced in maintaining his defense on the merits, and (2) knew or should have known that, but for a mistake concerning the identity of the proper party, the action would have been brought against the party.

The delivery or mailing of process to the United States Attorney, or the United States Attorney's designee, or the Attorney General of the United States, or any agency or officer who would have been a proper defendant if named, satisfies the requirement of clauses (1) and (2) hereof with respect to the United States or any agency or officer thereof to be brought

into the action as a defendant.

Federal Rules of Civil Procedure 56.

Rule 56. Summary Judgment

For Defending Party. A party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

Federal Rule of Civil Procedure 60(b)

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.

On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly dis-

covered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3) not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision (b) does not affect the

finality of a judgment or suspend its operation. This rule does not limit the power of a court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to grant relief to a defendant not actually personally notified as provided in Title 28, U.S.C. §1655, or to set aside a judgment for fraud upon the court. Writs of coram nobis, coram vobis, audita querela, and bills of review, and bills in the nature of a bill of review, are abolished, and the procedure for obtaining any relief from a judgment shall be by motion as prescribed in these rules or by an independent action.

U.S. Equal Opportunity Commission
Notice of Right to File a
Civil Action, Appendix H

You are hereby notified that the attached decision in your case is final. You have the right to file a civil action in the appropriate United States District Court WITHIN THIRTY (30) DAYS from the date that you receive this decision. If any of your claims were based on the Age Discrimination in Employment Act of 1967 (29 U.S.C. §633a), AS TO THOSE CLAIMS ONLY, you MAY have up to six years after the right of action first accrued in which to file a civil action. See Lehman v. Nakshian, 453 U.S. 156 (1981); 29 U.S.C. §633a(f); and 28 U.S.C. §2401(a). You are further notified that if you file a civil action, YOU MUST NAME THE APPROPRIATE OFFICIAL AGENCY OR DEPARTMENT HEAD AS THE DEFENDANT. Rule 25(d)(2) of the Federal Rules of Civil Procedure provides that you may describe the defendant by official title rather than by name. Failure to provide the NAME OR OFFICIAL TITLE of the agency head or, where appropriate, the department head, may result in the loss of any judicial redress to which you may be entitled. (Please note: For this purpose, Department means the overall national organization, such as the now defunct Department of Health, Education and Welfare, not the local administrative department where you might work). You must be sure that the proper defendant is named when you file your civil action.

APPOINTMENT OF COUNSEL

If you decide to file a civil action and do not have or are unable to obtain the services of an attorney to act on your behalf, under Title VII of the Civil Rights Act of 1964, 42 U.S.C. §20003 et seq., as amended, and the Rehabilitation Act of 1973, 29 U.S.C. §§791 and 794c, as amended, you may request that the Court appoint an attorney to represent you and may also permit you to file the civil action without payment of fees, costs, or security. If you want to request appointment of an attorney, your request must be FILED WITH THE COURT WITHIN THIRTY (30) DAYS from the date that you receive the Commission's decision.

NOTICE OF RIGHT TO REQUEST REOPENING

The Commissioners may, in their discretion, reopen and reconsider the decision in your case if you submit a written request and argument or evidence which tends to establish that:

1. New and material evidence is available that was not readily available when the previous decision was issued; or

2. The previous decision involves an erroneous interpretation of law or regulation or misapplication of established policy; or

3. The previous decision is of a precedential nature involving a new or unreviewed policy consideration that may have effects beyond the actual case at hand or is otherwise of such an exceptional nature as to merit the personal attention of the Commissioners.

EITHER PARTIES' REQUESTS AND ANY SUPPORTING ARGUMENTS, must be submitted within the 30 day time frame for filing a request to reopen. ALL REQUESTS must bear proof of postmark and be submitted to the Director, Office of Review and Appeals, Equal Employment Opportunity Commission, 5203 Leesburg Pike, Suite 900 Falls Church, Virginia 22041. In the absence of a postmark, the request to reopen shall be deemed filed on the date it is received by the Commission.

FILING A REQUEST TO REOPEN WITH THE COMMISSION MAY NOT EXTEND THE TIME PERIOD ALLOWED FOR FILING A CIVIL ACTION. IF YOU WISH TO PRESERVE YOUR RIGHT TO FILE A CIVIL ACTION, THE CIVIL ACTION SHOULD BE FILED WITHIN THE TIME ALLOWED, EVEN IF YOU DECIDE TO REQUEST REOPENING BY THE COMMISSION.

_____

Dolores L. Rozzi, Director
Office of Review and Appeals